

PHILLIP A. TALBERT  
United States Attorney  
JUSTIN J. GILIO  
Assistant United States Attorney  
2500 Tulare Street, Suite 4401  
Fresno, CA 93721  
Telephone: (559) 497-4000  
Facsimile: (559) 497-4099

Attorneys for Plaintiff  
United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
MARIO GARCIA ET AL.,  
  
Defendants.

CASE NO. 1:21-CR-00041-DAD-BAM

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
AND ORDER

DATE: April 27, 2022  
TIME: 1:00 p.m.  
COURT: Hon. Barbara A. McAuliffe

This case is set for status conference on April 27, 2022. On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Under General Order 618, a judge “may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.” General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This, previous, and subsequent General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive

1 openedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
 2 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
 3 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 4 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 5 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 6 or in writing”).

7 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 8 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-  
 9 justice continuances are excludable only if “the judge granted such continuance on the basis of his  
 10 findings that the ends of justice served by taking such action outweigh the best interest of the public and  
 11 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable  
 12 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that  
 13 the ends of justice served by the granting of such continuance outweigh the best interests of the public  
 14 and the defendant in a speedy trial.” *Id.*

15 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 16 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 17 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 18 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 19 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 20 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*  
 21 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time  
 22 following the September 11, 2001 terrorist attacks and the resultant public emergency).

23 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt  
 24 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-  
 25 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act  
 26 continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL  
 27 1589359 at \*7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is  
 28 detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked

1 speedy trial rights since the case's inception; (4) whether a defendant, if detained, belongs to a  
2 population that is particularly susceptible to complications if infected with the virus; (5) the seriousness  
3 of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes;  
4 (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed;  
5 and (7) whether the district court has the ability to safely conduct a trial. *Id.*

6 In light of the foregoing, this Court should consider the following case-specific facts in finding  
7 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)  
8 (Local Code T4). If continued, this Court should designate a new date for the status conference. *United*  
9 *States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be  
10 "specifically limited in time").

### 11 STIPULATION

12 Plaintiff United States of America, by and through its counsel of record, and defendant, by and  
13 through defendant's counsel of record, hereby stipulate as follows:

14 1. By previous order, this matter was set for status conference on April 27, 2022.

15 2. By this stipulation, defendant now moves to continue the status conference until July 13,  
16 2022, and to exclude time between April 27, 2022, and July 13, 2022, under 18 U.S.C. § 3161(h)(7)(A),  
17 B(iv) [Local Code T4].

18 3. The parties agree and stipulate, and request that the Court find the following:

19 a) The government has represented that the discovery associated with this case  
20 includes investigative reports, photographs and media evidence, jail call recordings, cell phone  
21 extractions, and other items. Since the last continuance, additional jail call slip sheets have been  
22 provided to the defendants to assist with their review of the voluminous jail calls. All this  
23 discovery has been either produced directly to counsel and/or made available for inspection and  
24 copying.

25 b) Defense counsel for Isaiah Garcia has asked the government for some additional  
26 items of discovery, which the government is preparing to process and should be made available  
27 before April 27, 2022.

28 c) Counsel for defendants desires additional time to consult with his/her client,

review the voluminous discovery, conduct independent investigation and legal research, and pursue plea negotiations and potential resolution of the case.

d) Counsel for defendant believes that failure to grant the above-requested continuance would deny him/her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

e) The government does not object to the continuance.

f) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of April 27, 2022 to July 13, 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: April 18, 2022

PHILLIP A. TALBERT  
United States Attorney

/s/ JUSTIN J. GILIO  
JUSTIN J. GILIO  
Assistant United States Attorney

Dated: April 18, 2022

/s/ Reed Grantham  
Reed Grantham  
Counsel for Defendant  
MARIO GARCIA

1 Dated: April 18, 2022

/s/ Serita Rios

Serita Rios

Counsel for Defendant

ISAIAH GARCIA

6 **ORDER**

7 IT IS SO ORDERED that the status conference is continued from April 27, 2022, to **July 13, 2022,**  
8 **at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe.** Time is excluded pursuant to 18 U.S.C. §  
9 3161(h)(7)(A), B(iv).

10  
11 IT IS SO ORDERED.

12 Dated: April 19, 2022

/s/ *Barbara A. McAuliffe*

UNITED STATES MAGISTRATE JUDGE